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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,691	10/17/2003	Douglas Christian Greening	52428-5	2690
23971	7590	03/04/2005	EXAMINER	
BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA			DESAI, HEMANT	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 03/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/605,691	<b>Applicant(s)</b> GREENING ET AL.	
	<b>Examiner</b> Hemant M Desai	<b>Art Unit</b> 3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 and 24-27 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-27 is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 12 and 16-22 is/are rejected.
- 7) ☒ Claim(s) 7-10 and 13-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on 1/6/2005. These drawings are acceptable.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "between the first .....apart." (claim 18, lines 6-11) is vague, confusing and/or misleading because it is not clear which first part and second part applicant is referring to. Further "the first part" (claim 18, lines 8-9) and "the second part" (claim 18, line 9) lack proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 11-12, 16, 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Propst (3830038).

Propst discloses a bag presenter apparatus for use to present a bag for filling by a packaging machine, the bag including a first side panel and an opposite side panel

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(see fig. 1) and the packaging machine having a filling station including a filling chute (11, fig. 1) and a filled bag conveyor (14, fig. 1), the bag presenter apparatus comprising a bag gripper (18, fig. 1) for holding the bag to be filled the packaging machine such that materials from the chute (11) can be introduced to the bag, the bag gripper (18) operable to hold the bag to be filled without wicket pins also engaging the bag (see fig. 1) and configurable to hold the first side panel of the bag and in a position conducive to engagement of the bag by the filled bag conveyor (14) of the packaging machine, which meets all the claimed limitations.

Regarding claims 2 and 3, the bag presenter is a stand- alone unit and being mountable relative to the filling chute (see col. 1, lines 37-45) of a bag-packaging machine.

Regarding claim 4, the bag gripper (18) includes a pair of spaced apart gripping fingers (37a, 37b, 38a, 38b, figs. 2) positioned to hold the bag

Regarding claim 5, the bag gripper (18) includes a pair of spaced apart gripping pinchers (37a, 37b, 38a, 38b, figs. 2) selected to grip a first side panel of the bag to be filled at two spaced apart fixed points.

Regarding claim 6, the bag presenter moves the bag along a substantially uniform direction from a bag supply area to the bag gripper.

Regarding claims 11-12, the apparatus comprises a conveyor (17, fig. 2) for moving the bag from a supply area (13, fig. 1) towards the bag gripper (18), the conveyor (17) comprising a bag opening mechanism (see figs. 2-3) including engaging devices (suction cups 25, 30, fig. 2) selected to engage the side panels of the bag and

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pull them apart (see fig. 3), wherein the bag opening mechanism includes a sensor for detecting a non-opening bag (see col. 1, lines 49-55).

Regarding claim 16, the bag presenter comprising a bag feeder (17) for moving the bag from the bag supply (13) toward the bag gripper (18).

Regarding claim 18, Propst, as mentioned above, discloses all the claimed limitations of claim 18.

Regarding claims 19-20, the bag handler (conveyor 17) comprising a bag opening mechanism (see figs. 2-3) including engaging devices (suction cups 25, 30, fig. 2) selected to engage the side panels of the bag and pull them apart (see fig. 3) wherein the bag opening mechanism includes a sensor for detecting a non-opening bag (see col. 1, lines 49-55).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Propst (3830038).

Propst, as mentioned above, discloses all the claimed limitations, except for the adjustability of conveyor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the conveyor adjustable, since it has

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been held that the provision of adjustability, where needed, involve only routine skill in the art. *In re Stevense*, 101 USPQ 248 (CCPA 1954).

8. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Propst (3830038) in view of Gabree et al. (5442898).

Propst, as mentioned above discloses all the claimed limitations, except a suction cups instead of an air jet device as a bag-opening device. However, Gabree et al. teaches an air jet device (132, fig. 5B) to open the mouth of the bag in an opened configuration (see col. 8, lines 5-15). Therefore because these two elements were art recognized equivalents at the time the invention was made one of ordinary skill in the art would have found it obvious to substitute suction cup with the air jet device.

#### ***Allowable Subject Matter***

9. Claims 24-27 are allowed.

10. Claims 7-10, 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

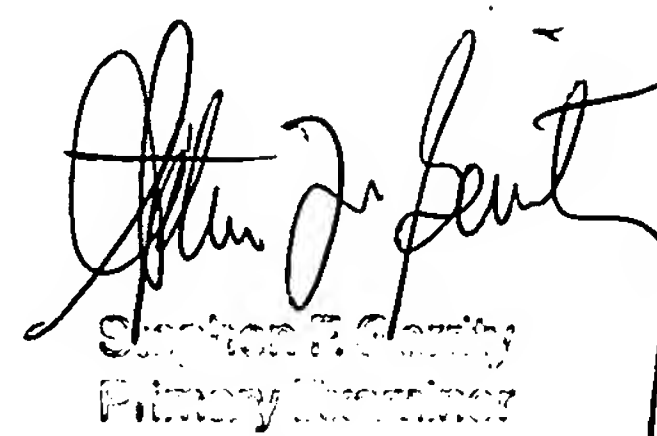
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Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HMD



Stephen F. Garity  
Primary Examiner